



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Funeral Directors & Embalmers, Department of Health Professions
VAC Chapter Number:	18 VAC 65-20-10 et seq.
Regulation Title:	Regulations of the Board of Funeral Directors & Embalmers
Action Title:	Periodic review – continuing education
Date:	3/19/03

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

Amendments to regulations are required for compliance with Chapter 270 of the 2002 Acts of the Assembly mandating the Board to promulgate regulations to establish continuing education requirements for renewal of a license to ensure competency of the practitioners. The statute restricts the number of hours that may be required to five per year and does not allow continuing education credit for courses “where the principal purpose of the course is to promote, sell or offer goods, products or services to funeral homes.” In accordance with the law, the Board also proposes criteria for approval of continuing education providers and provides for extensions or waivers of the requirements.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

In subsection A of 18 VAC 65-20-152, the Board corrected the name of one provider of continuing education and added the name of the Virginia Morticians Association.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On March 19, 2003, the Board of Funeral Directors & Embalmers adopted final amendments to 18 VAC 65-20-10 et seq., Regulations of the Board of Funeral Directors & Embalmers.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, administer a licensure and renewal program, and discipline regulated professionals.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*

4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*

12. To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.

The legal mandate to promulgate regulations is found in § 54.1-2816.1.

§ 54.1-2816.1. Continuing education requirements; promulgation of regulations.

A. The Board shall promulgate regulations governing continuing education requirements for funeral services licensees, funeral directors and embalmers licensed by the Board.

B. The Board shall approve criteria for continuing education courses, requiring no more than five hours per year, that are directly related to the respective license and scope of practice of funeral service licensees, funeral directors and embalmers. Approved continuing education courses shall emphasize, but not be limited to, compliance with laws and regulations governing the profession. Course providers may be required to register continuing education courses with the Board pursuant to Board regulations. The Board shall not allow continuing education credit for courses where the principal purpose of the course is to promote, sell or offer goods, products or services to funeral homes.

C. All course providers shall furnish written certification to licensees of the Board attending and completing respective courses, indicating the satisfactory completion of an approved continuing education course. Each course provider shall retain records of all persons attending and those persons satisfactorily completing such continuing education courses for a period of two years following each course. Applicants for renewal or reinstatement of licenses issued pursuant to this article shall retain for a period of two years the written certification issued by any Board-approved provider of continuing education courses. The Board may require course providers or licensees to submit copies of such records or certification, as it deems necessary, to ensure compliance with continuing education requirements.

D. The Board shall have the authority to grant exemptions or waivers in cases of certified illness or undue hardship.

E. The Board may provide for an inactive status for those licensees who do not practice in Virginia. The Board may adopt regulations reducing or waiving continuing education requirements for any licensee granted such inactive status. However, no licensee granted inactive status may have their license changed to active status without first obtaining additional continuing education hours as may be determined by the Board. No person or registrant shall practice in Virginia as an embalmer, funeral director, or funeral service licensee unless he holds a current, active license.

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Chapter 270 of the 2002 Acts of the Assembly amended the law by mandating that the Board promulgate regulations for the establishment of continuing education requirements. To carry out that mandate, the Board established an advisory group to meet with the Regulatory Committee to study the type and amount of continuing education to be required, review what other states require, and develop a recommendation for the adoption of proposed regulations.

The Board of Funeral Directors and Embalmers is concerned about the continued competency of some of its licensees, especially as it relates to their knowledge and understanding of the rules and ethics governing funeral practice, the standards related to the practice of funeral services and preneed contracts and funding. Laws and regulations governing the funeral industry are complex and varied – ranging from FTC rules to local ordinances on disposal of hazardous waste to specific rules for funding of preneed. Highly infectious diseases borne by decedents can expose licensees and members of the public to significant danger. The arranging and financing of preneed contracts requires continuous updating of knowledge. Therefore, the goal of the Board was to develop requirements that would: 1) emphasize professional ethics and encourage licensees to become more knowledgeable about the laws and regulations governing the profession; 2) offer a choice of content and form that is flexible enough to meet the needs of licensees in a variety of practice settings in any location in Virginia; and 3) assure the public that funeral service licensees have maintained their skills and competencies in order to protect the public health, safety and welfare.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

In compliance with the statute, the Board adopted a requirement for continuing education for renewal of an active license, which consists of a total of five hours per year in courses that emphasize professional ethics, standards of practice or preneed and the laws and regulations governing the profession. There are also rules for maintaining documentation of continuing education, auditing, extensions and exemptions. Evidence of continuing competency hours would be required for reinstatement of a lapsed license or reactivation of an inactive license.

Regulations are established for the approval of continuing education providers with provisions for submission of background information and a review fee. Providers that are educational institutions, governmental agencies or non-profit professional associations are set forth in regulation or may be approved by board action. All providers are required to maintain documentation of courses, monitor attendance and provide a certificate of completion to attendees.

Finally, an inactive license is established to allow persons who are retired or are no longer practicing in Virginia to retain a license without obtaining continuing education. An inactive license may be renewed for \$75 but does not entitle the licensee to engage in practice.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Advantages and disadvantages to the public:

The continuing competency requirements are intended to provide some assurance to the public that licensees of the Board are maintaining current knowledge and skills, while providing the maximum amount of flexibility and availability to licensees. Highly infectious diseases borne by decedents can expose licensees and members of the public to significant danger. The arranging and financing of preneed contracts requires continuous updating of knowledge, and a funeral service licensee lack of knowledge or ethical behavior can be costly and painful to consumers. In FY 2000, there were 20.95 complaints against funeral establishments and 28.61 complaints against funeral service providers per 1,000 licensees. Passage of a bill to require continuing education was strongly supported by all funeral-related groups or associations in an effort to improve the delivery of services and level of professionalism.

There are definite advantages of the proposed amended regulations to the public, which will have greater assurance that the licensees for the Board are engaged in activities to maintain and improve their knowledge and skills in providing for dead human remains and in protecting the public from the risk of communicable diseases. The public is also better served by a continuing competency requirement for licensees who have allowed their license to expire or have been inactive.

Advantages and disadvantages to the licensees:

For a minority of practitioners who do not currently engage in any continuing learning in their profession, these requirements will represent an additional burden. However, it was determined by enactment of the statute and by the Board's concurrence that those practitioners and the public they serve would greatly benefit from continuing learning requirements, and that the public is better protected if there is some assurance of that effort. The 5-hour requirement may necessitate attendance at a district meeting or participation in a community college course on topics such as pre-need funding. Interaction with other funeral service providers who are practicing competently and ethically may help some licensees avoid the substandard practices that have led to disciplinary cases in the past. There was some discussion about exempting licensees over the age of 65, but the Board decided that all active licensees should have continuing education. In fact, those who have been away from mortuary school the longest are sometimes in the greatest need of continuing education.

Advantages or disadvantages to governmental agencies:

There are no advantages or disadvantages to any government agency, except the Board of Funeral Directors and Embalmers. The Board has already incurred additional costs for meetings and hearings on continuing education and will continue to incur costs for monitoring compliance

of licensees and for holding additional disciplinary hearings for individuals who do not comply with the requirement.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Proposed regulations were published in the Virginia Register of Regulations on December 30, 2002. Public comment was requested for a 60-day period ending February 28, 2003. The following written comment was received:

Comment: One person commented that the Board should not amend its regulations to disallow or restrict the hours of OSHA training that may be credited towards completion of the continuing education requirement.

Board response: The Board did not amend its regulations to disallow or restrict the hours of continuing education provided they emphasize the ethics, standards of practice, pre-need contracts and funding, or laws and regulations governing the profession of funeral services in Virginia.

A Public Hearing before the Board of Funeral Directors and Embalmers was held on January 21, 2003 at which no public comment was received.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

The amended sections are as follows:

18 VAC 65-20-70. Required fees.

A new fee of \$200 is added for an application or renewal for a continuing education provider approved by the Board.

18 VAC 65-20-130. Renewal of license; registration.

An amendment is adopted to require compliance with continuing competency requirements for annual renewal of a license.

18 VAC 65-20-140. Reinstatement of expired license or registration.

Current regulations allow a licensee to reinstate for up to three years following expiration of his license. A new subsection B will require that the applicant for reinstatement provide evidence of having the required number of continuing education hours for the period in which the license has been expired. A new subsection C for reapplication after a three-year period is a restatement of current language found in section 150, which is being repealed.

18 VAC 65-20-150. Reapplication of license.

The requirement in this section is now found in subsection C of 140 and is being repealed in 150.

18 VAC 65-20-151. Continued competency requirements for renewal of an active license.

- Amended language requires licensees to obtain five hours of continuing education offered by an approved sponsor for annual renewal of licensure. Those hours must be in courses that emphasize ethics, standards of practice, preneed contracts and funding or the laws and regulations governing the profession.
- The criteria for approved courses are that they: 1) must be directly related to the scope of practice; 2) must emphasize professional ethics, standards of practice and the laws and regulations governing the profession; and 3) must not have as their principal purpose to sell or offer goods, products or services.
- There are also provisions for an extension of time for good cause of up to one year and for an exemption from the requirement due to circumstances beyond control of the licensee.

18 VAC 65-20-152. Continuing education providers.

- In subsection A, the board will approve through regulation courses offered by local, state or federal government agencies or regionally accredited colleges and universities. The Board may also recognize national, regional, state and local associations that are funeral-related, not for profit, and have an established record of providing continuing education to members and non-members. The official name of one provider listed was amended in the adoption of final regulations, and the Virginia Morticians Association (VMA) was specifically named. The proposed regulations contemplated that VMA would be included under the “National Funeral Directors and Morticians Associations and state chapters,” but it was reported that VMA may not continue as a state chapter of the national association.
- Course providers not listed in subsection A may apply for approval by the board as continuing education providers if they submit the required information at least 60 days prior offering a continuing education course, provide acceptable documentation of an instructional plan and course objectives; provide a syllabus of the course or courses to be offered with the credentials of the course instructors, a description of each session, including number of contact hours; and pay the continuing education provider fee.
- Board approval of continuing education providers expires on July 1 of each year and may be renewed upon resubmission of documentation on courses and instructors and the

provider fee. Continued approval may be granted without submission of the provider fee if the provider submits that the courses and instructors will not change from the previous year.

- All continuing education providers are required to: 1) maintain and provide to the board upon request documentation of the course titles and objectives and of licensee attendance and completion of courses for a period of three years; 2) monitor attendance at classroom or similar educational experiences for compliance with law and regulations; and 3) provide a certificate of completion for licensees who successfully complete a course.

18 VAC 65-20-153. Documenting compliance with continuing education requirements.

- Licensees required to maintain original documentation of continuing education for two years following renewal, and after each renewal period, the board may conduct a random audit of licensees to verify compliance. If requested to do so, a licensee must provide documentation, including transcripts or certificates of completion within 14 days.
- Regulations also place responsibility on the licensee for compliance with continuing education requirements, including the maintenance of records and the relevance of the courses to the category of licensure.
- Continuing education hours required by disciplinary order cannot be used to satisfy renewal requirements.

18 VAC 65-20-154. Inactive license.

- This new section provides for an inactive license upon a request and submission of the required renewal fee of \$75. An inactive licensee cannot perform any act requiring a license to practice funeral service in Virginia and is not be required to meet continuing education requirements.
- To reactivate an inactive license, a licensee must pay the difference between the renewal fee for an inactive license and that of an active license and provide proof of completion of the number of continuing competency hours required for the period in which the license has been inactive, not to exceed three years.

18 VAC 65-20-500. Disciplinary action.

An amendment states that is may be considered unprofessional conduct to fail to comply with applicable laws and regulations, including continuing education requirements.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode

the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability. To the extent funeral service licensees are required to pay a fee to obtain continuing competency courses, there may be some very modest reduction in disposable income.